

# EXHIBIT 32

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL ) MDL NO. 1456  
INDUSTRY AVERAGE WHOLESALE ) CIVIL ACTION  
PRICE LITIGATION ) 01-CV-12257-PBS  
THIS DOCUMENT RELATES TO )  
U.S. ex rel. Ven-a-Care of ) Judge Patti B. Saris  
the Florida Keys, Inc. )  
v. ) Chief Magistrate  
Abbott Laboratories, Inc., ) Judge Marianne B.  
No. 06-CV-11337-PBS ) Bowler  
- - - - -

(cross captions appear on following pages)

Videotaped deposition of SUE GASTON

Volume II

Washington, D.C.  
Wednesday, March 19, 2008  
9:00 a.m.

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<p style="text-align: right;">Page 432</p> <p>1 BY MR. BUEKER:</p> <p>2 Q. Ms. Gaston, do you have in front of you 3 what's been marked as Exhibit 4 for 4 identification?</p> <p>5 A. Yes.</p> <p>6 Q. And would you agree with me that 7 Exhibit 4 is a three page exhibit consisting of 8 three separate e-mails?</p> <p>9 A. Correct.</p> <p>10 Q. And are you familiar with e-mails like 11 those reflected in Exhibit 4?</p> <p>12 A. It looks familiar.</p> <p>13 Q. What is it?</p> <p>14 A. From my recollection, there was a 15 period of time where we were soliciting comments 16 from states or I think some of the pharmacy 17 associations on a FUL list that was placed out 18 there without manual review. And we established 19 a federal upper limit e-mail box where they could 20 send in their comments to give us some feedback 21 on this draft FUL list.</p> <p>22 Q. And that FUL list that you're referring</p>	<p style="text-align: right;">Page 434</p> <p>1 Q. Okay. Do you recall the nature of the 2 feedback at all?</p> <p>3 A. Basically they were giving us feedback 4 whether they felt that the FUL prices or the 5 drugs were correctly on the FUL list or needed 6 adjust or shouldn't -- or weren't available. I 7 think it was feedback about the whole list that 8 was put out at that time.</p> <p>9 Q. Okay. Do you recall what if anything 10 CMS did in response to receiving feedback?</p> <p>11 A. I can't remember. I don't know if we 12 just reverted back to the list that was still in 13 place. I don't have a recollection of that.</p> <p>14 Q. Do you know whether CMS withdrew the 15 list that had been sent out without manual 16 review?</p> <p>17 A. I would assume that that's what 18 occurred.</p> <p>19 Q. Other than in this time period, the 20 2000 to 2001 time period, were there other ways 21 in which CMS received feedback on its FULs?</p> <p>22 A. Yes.</p>
<p style="text-align: right;">Page 433</p> <p>1 to that was sent out without manual review, that 2 took place in 2000, right?</p> <p>3 A. I'm not sure. It appears so because of 4 the date on the e-mail.</p> <p>5 Q. But in or about 2000?</p> <p>6 A. Correct.</p> <p>7 Q. And you said you set up an e-mail 8 mailbox to get complaints?</p> <p>9 A. Feedback.</p> <p>10 Q. Feedback? Sorry.</p> <p>11 And did you get a lot of feedback? Did 12 CMS get a lot of feedback?</p> <p>13 A. I can't remember.</p> <p>14 Q. Okay. Just looking at the e-mails that 15 are contained in Exhibit 4, it looks like you got 16 feedback here from Albertson's, Omni Care and it 17 looks like Eckerd or Brooks Pharmacy. I take it 18 one source of feedback was the pharmacy 19 community, pharmacists?</p> <p>20 A. Correct.</p> <p>21 Q. And you also said associations and --</p> <p>22 A. Yeah. State Medicaid agencies.</p>	<p style="text-align: right;">Page 435</p> <p>1 Q. How?</p> <p>2 A. We would get phone calls, e-mails, 3 sometimes letters or faxes.</p> <p>4 Q. And who would receive that feedback?</p> <p>5 A. I would. Or Larry Reed.</p> <p>6 Q. And what kind of feedback would CMS 7 typically receive?</p> <p>8 A. It would be comments maybe from the 9 pharmacy saying that the product is not available 10 or that the pricing appears to be either too low 11 or too high. Mostly availability issues.</p> <p>12 Q. And when you got feedback from some 13 source that a drug wasn't available, what if any 14 steps would CMS take?</p> <p>15 A. What we would do is call the 16 manufacturer or wholesaler and verify if that was 17 a fact. Sometimes it might be just one state 18 that's having an availability problem. But we 19 have to make sure that it's an availability 20 problem that would affect the FUL list for all 21 the states.</p> <p>22 Q. And what if you learn that, for</p>

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<p style="text-align: right;">Page 448</p> <p>1 A. Correct.</p> <p>2 MR. WINGET-HERNANDEZ: Objection, form.</p> <p>3 I apologize. I withdraw that objection. I just</p> <p>4 was confused about what number you were looking</p> <p>5 at.</p> <p>6 BY MR. BUEKER:</p> <p>7 Q. Okay. And you see there's a number</p> <p>8 that's crossed out that's .2999 over in the left-</p> <p>9 hand side just before the bolded text we were</p> <p>10 talking about?</p> <p>11 A. Correct.</p> <p>12 Q. And that -- because it's cut off,</p> <p>13 perhaps it would help to refer to Exhibit 5. But</p> <p>14 that's the FUL price that the FULs system</p> <p>15 calculated, correct --</p> <p>16 A. Correct.</p> <p>17 Q. -- the crossed out number .2999?</p> <p>18 A. Correct.</p> <p>19 Q. And that FUL number that's calculated</p> <p>20 by the system would have been based on this low</p> <p>21 price of .1999, correct?</p> <p>22 A. Correct.</p>	<p style="text-align: right;">Page 450</p> <p>1 review. Is this one of those flags?</p> <p>2 A. Yes.</p> <p>3 Q. And why was it important that the FULs</p> <p>4 system cautioned you to look at or manually</p> <p>5 review a FUL that was set in this manner?</p> <p>6 A. Because if we allowed the FUL to be set</p> <p>7 at this price then it would be an availability</p> <p>8 issue.</p> <p>9 Q. In other words, that if you allowed a</p> <p>10 FUL to be set at this price based on this lowest</p> <p>11 published price, then you'd have an availability</p> <p>12 issue and that's a problem, it's not a reasonable</p> <p>13 FUL?</p> <p>14 A. Correct.</p> <p>15 Q. And so that number is crossed out and a</p> <p>16 different number is written in that's .5718,</p> <p>17 right?</p> <p>18 A. For the FUL price.</p> <p>19 Q. For the FUL price.</p> <p>20 A. Correct.</p> <p>21 Q. And that appears to be based on from</p> <p>22 the note on the bottom a United Research Labs or</p>
<p style="text-align: right;">Page 449</p> <p>1 Q. And if you go up and look at the list</p> <p>2 of published prices above, you would agree with</p> <p>3 me that there's no published price that's below</p> <p>4 that .2999 number, right?</p> <p>5 A. Correct.</p> <p>6 Q. Except the one price in which the FUL</p> <p>7 was based?</p> <p>8 A. Yes.</p> <p>9 Q. Or I shouldn't say based. Was</p> <p>10 calculated by the system.</p> <p>11 So does that help to refresh your</p> <p>12 recollection that indeed this warning, "FULs</p> <p>13 price not greater than another supplier," was</p> <p>14 essentially an occasion that the FULs system had</p> <p>15 detected that by basing a FUL on the lowest</p> <p>16 published price the FUL was being set at below</p> <p>17 the next published price?</p> <p>18 A. Correct.</p> <p>19 Q. Is that a warning -- you talked the</p> <p>20 last time in your last deposition about certain</p> <p>21 flags that the system had to tell you and your</p> <p>22 colleagues that you needed to conduct a manual</p>	<p style="text-align: right;">Page 451</p> <p>1 URL's WAC?</p> <p>2 A. Correct.</p> <p>3 Q. And URL's WAC was not the lowest</p> <p>4 published price in this instance, right? Because</p> <p>5 we've seen for example Major Pharmaceuticals had</p> <p>6 a lower published price?</p> <p>7 A. Well, I thought you meant excluding</p> <p>8 that published price.</p> <p>9 Q. No. I didn't mean that.</p> <p>10 A. Yeah. Major's was the next lowest.</p> <p>11 The next lowest was URL.</p> <p>12 Q. So what we see in Exhibit 6 is another</p> <p>13 situation in which, exercising its discretion,</p> <p>14 CMS chose to set a FUL not based on the lowest</p> <p>15 published price but based on the next lowest</p> <p>16 published price because that's what was</p> <p>17 reasonable to do in terms of ensuring access,</p> <p>18 correct?</p> <p>19 A. Correct.</p> <p>20 Q. And for the record, why is it that CMS</p> <p>21 would have chosen to ignore the lowest published</p> <p>22 price?</p>

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<p>1 12 reflects the manual evaluation that was being      2 done in the October 2001 time period as to      3 whether or not to establish or reestablish a FUL      4 for -- or revise the FUL for the 90-microgram      5 albuterol inhaler?</p> <p>6 A. Correct.</p> <p>7 Q. And Exhibit 3 is the CMS transmittal      8 that comes out November 20th 2001, so shortly      9 after the analysis we see in Exhibit 12?</p> <p>10 A. Correct.</p> <p>11 Q. And if you flip to the second page,      12 page 2, of Exhibit 3 you'll see that there's no      13 FUL established for the 90-microgram albuterol      14 inhaler? There's other albuterol FULs but not for      15 the inhaler, correct?</p> <p>16 A. Correct.</p> <p>17 Q. Which is consistent with the note you      18 wrote in Exhibit 12, remove FUL greater than most      19 AWPs, correct?</p> <p>20 A. Correct.</p> <p>21 Q. So in other words, CMS didn't establish      22 or reestablish a FUL -- or revise the FUL for the</p>	<p>1 necessary for CMS to establish a FUL were met at      2 this time?</p> <p>3 MS. MARTINEZ: Objection, form.</p> <p>4 A. The conditions were met, but the      5 pricing condition wasn't met.</p> <p>6 Q. What pricing condition was that?</p> <p>7 A. It was that if you would take the      8 prices that are remaining and multiply by 150      9 percent you're going to have a price that's, it      10 looks like, over what the AWPs are. So you're      11 sort of defeating the purpose of the FUL program.</p> <p>12 Q. Which was, again, soft savings?</p> <p>13 A. Soft savings to the states. The states      14 can set their own reimbursement level at that      15 point.</p> <p>16 Q. So as we've kind of seen throughout,      17 CMS is trying to establish a FUL that's not too      18 low and not too high to achieve a cost savings,      19 but also not set it too low to create an access      20 issue; that's the balance CMS is trying to      21 strike?</p> <p>22 A. Correct.</p>
<p style="text-align: center;">Page 497</p> <p>1 90-microgram inhaler in this 2001 time period; it      2 actually removed the FUL?</p> <p>3 A. Correct.</p> <p>4 Q. And it did so despite the fact there      5 are shown on this sheet a series of      6 manufacturers' reported published prices, right?</p> <p>7 A. Correct.</p> <p>8 Q. There's a published price for Warrick,      9 there's a published price for Schering, Martec,      10 Zenith and Glaxo-Wellcome, among others?</p> <p>11 A. I think Schering is discontinued.</p> <p>12 Q. Oh, I'm sorry. You're right. But the      13 note at the bottom -- Ms. Bergin's note at the      14 bottom would indicate that there were at least      15 reported published prices for Warrick, Martec and      16 Zenith?</p> <p>17 A. Correct.</p> <p>18 Q. In other words, there were three      19 manufacturers who were reported published prices      20 for the 90-microgram inhaler?</p> <p>21 A. Correct.</p> <p>22 Q. And so in other words the conditions</p>	<p style="text-align: center;">Page 499</p> <p>1 Q. And you did that -- the balance was      2 struck, sometimes the computer program worked as      3 it was supposed to and that balance was struck by      4 the computer program, but other times it was the      5 result of manual intervention?</p> <p>6 A. Correct.</p> <p>7 Q. And the manual intervention resulted in      8 CMS making a choice in its discretion, correct?</p> <p>9 A. Correct.</p> <p>10 MR. BUEKER: Anyone keeping track of      11 how many drugs we've covered?</p> <p>12 MS. MARTINEZ: No.</p> <p>13 MR. BUEKER: Well, we're going to do      14 another one. Can I ask the court reporter to      15 mark as Exhibit 13 for identification a five page      16 document that's Bates labeled HHD 175-1073 to      17 1077.</p> <p>18 (Exhibit NY Counties 013 was      19 marked for identification.)</p> <p>20 BY MR. BUEKER:</p> <p>21 Q. Not a rush, but just let me know when      22 you're ready.</p>

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